

COMMITTEE ON LANDS AND BUILDINGS

November 5, 2003

5:00 PM

Chairman Thibault called the meeting to order.

The Clerk called the roll.

Present: Aldermen Thibault, Gatsas, Pinard, DeVries, Garrity

Messrs: W. Jabjiniak, R. Bramley, K. Clougherty, R. MacKenzie,
Deputy Solicitor Arnold, T. Lolicata, Atty. Donovan, Atty. Zachos,
Atty. Nardi

Chairman Thibault addressed Item 3 of the agenda:

Discussion with appraiser regarding Canal Street Garage.

Deputy Clerk Johnson stated I believe the appraiser was requested to attend this meeting at the request of Alderman Gatsas initially and based on some discussion at the Board meeting.

Alderman Gatsas asked do you have a copy of the appraisal.

Deputy Clerk Johnson replied I have one copy.

Chairman Thibault called the appraiser forward.

Mr. William Jabjiniak stated let me jump in here and start off. This is Bob Bramley. He is the appraiser who has completed the appraisal on the Canal Street garage. He is here at the request of the Committee and Alderman Gatsas to answer specific questions related to the appraisal and specifically I am here to speak to the RFP or the negotiated process we have gone through with the abutter so I guess I am at your mercy with which way you would like to go. Do you want to ask questions first or would you like me to get into where we stand with the RFP process?

Chairman Thibault asked does the Committee have any questions for the appraiser.

Alderman Gatsas stated I am not going to get into the numbers of this appraisal but on Page 6 of your appraisal the definition of market value, can you read for the record from the bottom starting with the most probable price.

Mr. Bramley responded “market value is the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably assuming the price is not affected by undue stimulant. Listed in this definition is a confirmation of a sale as of a specified date, passing as title from seller to buyer under conditions whereby buyer and seller are typically motivated, both parties are well informed or well advised and acting in what they consider their own best interest. A reasonable time is allowed for exposure in the open market. Payment is made in terms of cash, U.S. dollars or in terms of financial arrangement comparable thereto and the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.”

Alderman Gatsas asked so under your professional opinion wouldn't you say that market value would be something that would be based on a competitive price.

Mr. Bramley answered yes.

Alderman Gatsas asked so that would be open and not a negotiated price with one party.

Mr. Bramley answered yes. It would have competitive bidding and more than one party would be negotiating.

Alderman Gatsas stated in the appraisal I think you use a couple of properties known as the Wall Street Tower parking garage.

Mr. Bramley responded yes.

Alderman Gatsas asked can you tell me for the record where did you obtain the numbers that you used on a per space basis.

Mr. Bramley answered basically the information came from the City.

Alderman Gatsas asked so the amount of \$140/month per space was provided to you by the City.

Mr. Bramley answered that was the effective cost to the City paying for those spaces, yes.

Alderman Gatsas asked did you use that \$140/space in creating a market approach or an income approach on your evaluation.

Mr. Bramley answered no I did not.

Alderman Gatsas asked can you give me a reason why.

Mr. Bramley answered basically I didn't consider that the \$140/month effective parking rate was a market rental rate. You have to understand that the City controls 2,300 or 2,400 parking spaces in garages in the City. They set the rates. That basically is a competitive rate that other people work with. In the Wall Street garage it is my understanding that they rent these 400 spaces I believe for \$75/month and then as part of the lease agreement they reimburse the owner for the proportionate share of operating expenses associated with those 400 spaces. That is what brings the effective cost to the City up to the figure you mentioned. The City in turn I think is leasing the spaces to the public at \$60/space.

Alderman Gatsas asked so what you are saying is the effective rate of \$140/month includes maintenance and repairs.

Mr. Bramley answered yes.

Alderman Gatsas asked are you sure.

Mr. Bramley answered I believe so, yes.

Alderman Gatsas asked did they give you...were you given a copy of the parking agreement.

Mr. Bramley answered no.

Alderman Gatsas asked so you were only given that verbally.

Mr. Bramley answered yes.

Alderman Gatsas asked who gave you that verbally.

Mr. Bramley answered I don't have the notes with me.

Alderman Gatsas asked so you were never given the lease agreement that was drafted in 1985 that started at \$25/space and had an escalator that actually is a gross amount at \$145.

Mr. Bramley answered no.

Alderman Gatsas asked can somebody from some department tell me who gave Mr. Bramley those numbers then.

Mr. Jabjiniak stated he believes it was the Traffic Department that provided that information to him.

Alderman Gatsas called Mr. Tom Lolicata forward.

Mr. Tom Lolicata stated I believe those were supplied by Denise to Mr. Bramley. I could have the original. I am not sure. I have not seen it for quite awhile. We have been looking for it. You are right about an escalating clause. Maintenance was also included in it. I remember that part, too. At the time he was working with Denise and she had all the figures. She gets them from the company at Wall Street and she is the one who handles the invoices each month.

Chairman Thibault stated there is one thing I would like to know. I thought that tonight we were going to get from staff in negotiating with Hampshire Plaza if I might use that phrase as to where the staff felt we were. I am a little perplexed about the questions that are being asked but that is fine and I certainly will open the discussion up again for questions but I wonder if I can get staff to come up and make the Committee aware as to where we are at with the recommendation that we asked about several weeks ago. Bob, if you have to come in will you please come in also.

Mr. Jabjiniak stated let me explain. If you remember staff came forward suggesting an RFP process. The full Board directed the negotiating team from the City made up of Finance, Solicitor, Economic Development Office, Mr. Lolicata and myself. We went forward and negotiated with the abutter to the garage, Hampshire Plaza within the 21 days that the Board authorized us to. We were successful with negotiating a purchase and sales agreement. It comes in with the full endorsement of that group first of all. That agreement for \$3.3 million has been executed by the buyer. He has deposited \$100,000 in an escrow account with Sheehan, Phinney, Bass & Green.

Chairman Thibault asked could you restate that for the members of this Committee who may not be aware of exactly what has happened in the last few weeks so we all know what is going on here.

Mr. Jabjiniak answered simply that the negotiating team has come to a successful purchase and sales agreement with the abutter, in essence Hampshire Plaza LLC,

that has the full endorsement of the staff. The agreement is for \$3.3 million with a \$100,000 deposit now in the bank account of Sheehan, Phinney, Bass & Green as an escrow agent. They have proposed a cash transaction and they only put on a couple of quick conditions. One is a structural assessment, which has been complete and is satisfactory. The environmental assessment is underway currently and obviously that there be a clear and marketable title to the property. Other than that they are prepared to close within 30 days of execution of this agreement.

Chairman Thibault stated at this point what I would like to find out or make sure that this Committee understands is that 21 days ago we got you people and the City staff a criteria to give us some idea of what this property was worth and where it is at. Do we have an appraiser here? I keep thinking of the appraiser. Wasn't there an appraiser that was supposed to be here to tell us exactly what this place was worth? Okay I am sorry he is here. The City staff including Finance and you Bill and am I to include Planning in this?

Mr. MacKenzie responded no.

Chairman Thibault asked who else was included. Traffic?

Mr. Jabjiniak answered Traffic, the Solicitor and the Economic Development Office.

Chairman Thibault asked is everybody on the same page that they feel this is something we can go along with.

Mr. Jabjiniak answered yes they are.

Alderman Gatsas asked Mr. Bramley this is the document of the parking garage that I am taking about so I would think that in your profession if you are going to gather information to do a commercial appraisal and somebody said to you there was a lease with regards to that parking garage that was very important to a sales price wouldn't you ask for it.

Mr. Bramley answered yes if I thought it was reflective of the market. But as I told you I did not.

Alderman Gatsas asked if I told you that this lease started in 1985 with a monthly fixed rate of \$75/space and this was an arms length transaction, the accelerated price going to \$149 and if those were the two marketed pieces that were in the City...I think the other one is at \$130/month wouldn't you say that is an important document in your appraisal.

Mr. Bramley answered it would have been something to consider, yes.

Alderman Gatsas asked would that have brought your value...if you used those and the City at an arms length transaction was leasing 400 of the 500 spaces at a much higher rate.

Mr. Bramley answered in that particular instance that is the highest rate paid by anybody in the City – the \$140/month per space. There isn't any place else in the City of Manchester renting a space for that rate. As a matter of fact it is my understanding that Wall Street Towers since the City is paying \$140 and turning around and renting the spaces for \$60...

Alderman Gatsas interjected I never said the City was a good businessman.

Mr. Bramley stated I think that Wall Street Towers is also renting the spaces they have for \$60.

Alderman Gatsas asked did you get any rental figures from other communities like Portsmouth.

Mr. Bramley answered not in Portsmouth but I did in Nashua and I did in Concord.

Alderman Gatsas asked what did you get for a rental figure in Nashua.

Mr. Bramley answered I believe in the garage it was...the High Street garage in Nashua parking was \$45/car per month. In Concord the Durgin Block Municipal garage at the corner of School and Union the monthly parking was \$75/car per month and at the Fire House Block Municipal garage on the corner of North State Street the parking was also \$75/car per month.

Alderman Gatsas asked those are two privately owned and I believe the one in Nashua is a city owned lot is it not.

Mr. Bramley answered the ones in Concord are owned by the City.

Alderman Gatsas asked so they are getting \$75/space in Concord. Did you use those figures in your approach to value?

Mr. Bramley answered yes. I consider that the market rent for the subject property was \$75/car per month.

Alderman Gatsas asked and that changed the value that you did on an appraisal from eight months prior and correct me if I am wrong the appraisal that you did eight months or a year prior was at a higher value.

Mr. Bramley answered no.

Alderman Gatsas asked it was at a lower value.

Mr. Bramley answered yes. I think I am \$300,000 or \$400,000 higher than my earlier appraisal.

Alderman Lopez asked, Bill, you have a purchase and sales agreement for \$3.3 million right.

Mr. Jabjiniak answered that is right.

Alderman Lopez stated and when you mentioned the structure being complete and satisfactory is that going to be a stipulation for any additional cost to the City.

Mr. Jabjiniak answered the structural analysis has been complete and that condition has been waived.

Alderman Lopez asked I wonder if the Finance...I am sure he looked over the numbers. Could he give us a breakdown of the numbers and what this all means, the \$3.3 million because I think there is \$1.1 million that we owe in debt service and what the bottom line is for the City here?

Alderman Garrity asked, Bill, what was the first offer from Tower Realty. I can't remember.

Mr. Jabjiniak answered I believe it was \$2.5 million, which is also the same as the appraised value today. I'm sorry the appraised value as of September 5 is \$2.4 million. The original offer was \$2.5 million and they have now agreed to \$3.3 million.

Deputy Solicitor Arnold stated the City up to this point has not released the appraisal to any parties interested in negotiation. If you just heard the statements made I believe the preference at this point would be not to release that information in so far as what has already been done.

Mr. Kevin Clougherty stated the outstanding principal on the garage as of 6/30/03 was \$1,661,378. The difference would be the \$3.3 million.

Alderman Lopez asked have you analyzed the pluses for the City in selling the garage as far as taxes and expenses that we have over there.

Mr. Clougherty answered when we looked at this last year we said that you would be able to eradicate that debt and be able to reallocate that debt to some other projects and you will be able to increase your tax dollars on an annual basis. You can reallocate those dollars for other purposes.

Alderman Gatsas asked, Kevin, if I were to tell you that this document that is the lease on Wall Street Tower that there would be a possibility because it is my understanding that there is a continual deficit in the parking garage but this lease is a big portion of this deficit because of what we are paying, if I told you that the owners may be interested in negotiating this out and it shocks me that when we are paying \$140/month that nobody at the City level has never tried to negotiate out of that deal...

Mr. Clougherty interjected I believe they have, Alderman. It has always been a question in our minds to do that.

Alderman Gatsas asked who has attempted to negotiate that out.

Mr. Clougherty answered I believe it was in prior administrations.

Alderman Gatsas stated I talked to the owner the other day and nobody from this City has ever approached him to negotiate out of this deal. Now if I were to say to you that we could negotiate out of this deal and those 400 spaces would be relinquished...

Mr. Clougherty interjected we should do it.

Alderman Gatsas stated we should do it but we should obviously keep another garage that at that point could substantially be rented with spaces that we are renting down there, which would add additional income moving those people from those rented spaces to this tower.

Mr. Clougherty responded you would have to do an analysis of who is in those spaces and what the occupancy is on it right now. I mean if we are paying rent for spaces and there is nobody in them at Wall Street Tower that has an effect.

Alderman Gatsas asked Mr. Lolicata is there anybody in those spaces.

Mr. Lolicata answered my understanding is that right now there aren't many there at all. I think Kevin is correct.

Alderman Gatsas stated well we have 400. Are 200 rented or not rented?

Mr. Lolicata answered 200 are sub-leased and supposedly rented but nobody is occupying them. That is the only way I can put it to you.

Alderman Gatsas asked are we receiving income from them.

Mr. Lolicata answered some yes.

Alderman Gatsas stated well either they are sub-leased or they are not. My question is if 200 of them are sub-leased at \$65 that should be half the revenue coming out of there. Now are we not getting revenue from them?

Mr. Lolicata answered we are not getting revenue. The whole 200 aren't being used. Some are.

Alderman Gatsas asked what about the other 200.

Mr. Lolicata answered no.

Alderman Gatsas stated so we have 400 spaces and we are getting no revenue.

Mr. Lolicata responded we are getting some but not much.

Alderman Gatsas stated Mr. Jabjiniak I think at the last meeting we had received a letter from another interested party. Have you had any conversations with that other interested party?

Mr. Jabjiniak responded I have had some conversations with him but there has been nothing else in terms of a negotiation as we were directed to negotiate only with the abutter.

Alderman Gatsas stated I notice the interested party is here. Does he want to respond to the letter that he sent to the Board, Mr. Anagnost?

Chairman Thibault stated the purpose of this meeting tonight I thought was to have the City designate these parcels as not needed for the City if you will. I think this is what we should be looking at at this point. We should be looking to see if the City and the Planning Board are saying that this garage is surplus to the City and we can, in fact, look to sell it or do whatever this Committee wants. Am I right Kevin?

Mr. Clougherty answered that is right. You can have it declared surplus to the City.

Chairman Thibault stated why don't we start there. Let's find out if this is surplus to the City and if it is let's go from there. Bob is that something you can enlighten us on a little bit?

Mr. Robert MacKenzie stated I did provide a letter to the Clerk today. Has that been handed out?

Deputy Clerk Johnson answered it has.

Mr. MacKenzie stated basically we review requests for disposition of property and make a recommendation as to whether it is surplus or not. A couple of months ago the staff did have a meeting. A number of the same group was there including a couple of others to review all of the parking garages and all of the parking lots. The general conclusion that I got from that was that most of the parking garages do perform one or more important public functions. Of those that might be the most marginal in that regard would be the Canal Street garage and perhaps two lots in the Millyard. Other than those three we would not find any other garages or recommend that any of them be surplus. Given that these are on the marginal edge of what I would consider public purpose, I think the Board can determine them surplus to the needs of the City as stated in the report that I have provided to the Committee.

Alderman DeVries stated I am wondering if it might be appropriate at this time to continue in non-public session for further discussion about the appraisal.

Chairman Thibault stated I have no problem with that.

Deputy Solicitor Arnold stated you could recess and meet in non-public session if it is going to discuss the sale of property.

Alderman DeVries moved to enter into non-public session under 91-A:3II(d). Alderman Pinard duly seconded the motion. A roll call vote was taken. The motion carried unanimously.

Deputy Clerk Johnson advised that there was a motion made and duly seconded to reenter public session.

Alderman Gatsas asked Mr. Bramley you have heard the appraisal. You understand the appraisal. You have heard the purchase price. In your professional

opinion, if it were your property and for you to receive the highest price available would you negotiate with only one seller or would you go out to the open market.

Mr. Bramley answered I think I would go out on the open market and as I understand it there is another potential buyer who has expressed an interest and I certainly would talk to that buyer before I accepted this agreement.

Alderman Gatsas stated so we paid you for your opinion and your professional opinion says that we should be talking to all interested parties.

Mr. Bramley answered yes.

Alderman Lopez asked are you familiar with the City ordinance in the best interest of the City that we have. Have you calculated anything into that category?

Mr. Bramley answered no.

Alderman Lopez asked would you make that a factor knowing that in the best interest in the City and the Hampshire Plaza that we have the authority to move forward...there wouldn't be any calculation on your part as to whether the best interest of the City would have a bearing on any numbers.

Mr. Bramley answered not on my numbers. You already have...I appraised the property at \$2.4 million. You have an offer of I guess \$3.3 million. That is certainly something to consider.

Alderman Lopez stated you had indicated previously that the price that we are getting in the market that we control the market.

Mr. Bramley answered that is correct.

Alderman Lopez asked so this wouldn't have any bearing whatsoever. Since we control the market are we getting a good deal?

Mr. Bramley answered I don't know who the other interested party might be. My guesstimate might be it is one of the big law firms or something that needs parking because theoretically they would pay the higher price. They could save money in the long run by buying.

Alderman DeVries stated I would like to hear from the individual that has drafted the proposal that we have been negotiating with. Either their attorney or whoever represents them. I guess on their way up here there is a letter that has been distributed to the Committee and I don't know if that is in confidence or if that is

something that they are willing to be questioned on. The letter that was distributed to us from you?

Atty. William Donovan stated I am with Sheehan, Phinney, Bass & Green. I am here with my partner, Kim Zachos and Ben Nardi who is also an attorney and the three of us have been actively involved in negotiating the purchase and sale agreement with the City's negotiating team and to answer your question we are prepared to have the letter discussed in public.

Alderman DeVries stated I guess that would be the November 3 letter, which would be the cover letter that you enclosed with your bid. Within that you address that you have negotiated in turn with a new major retail tenant as stated in the letter and you envision that will benefit the City by bringing as much as \$100,000 annually in new tax dollars?

Atty. Kim Zachos answered that is correct. As indicated in my letter to the Alderman the purchase of this garage by Hampshire Plaza LLC will immediately raise the tax appraisal of that garage and it is estimated that that raise since we have heard tonight that my client is prepared to pay \$900,000 more than your appraisal...I will remind Mr. Gatsas that when the City hired the appraiser they did not hire him for his opinion as to what the process should be. They hired him for a professional opinion as to what in his opinion that garage is worth. He has come back with an appraisal that said it was \$2.4 million. I can only say as the negotiator on the part of the Plaza people that I wish I had known that while I was negotiating with the City team. I must say that the City team did one hell of a job because they negotiated us right up to \$3.3 million. I didn't answer the second part of your question, which is that there are currently ongoing negotiations with a major tenant that is prepared to take 100,000 square feet in that Plaza. Now I don't know what that in and of itself will do to the appraised value but it sure as heck is going to go up, which will mean further increased taxes for the City.

Alderman DeVries stated as I have indicated in the past certainly one of my objectives is to assure that the Plaza comes back to its full prior assessed value because it has been reduced and you do have some vacancies there. That was one of the reasons that the full Board or at least I had seen some public use for this particular transaction so that we could realize the full benefit of the tax dollars and now you are saying that you are realizing on top of that potentially another \$100,000 by improvements that are dependent upon the garage in order to facilitate that?

Atty. Zachos replied absolutely. That tenant has made it quite clear, in fact he has got us on a tough timeline that if we can't promise him the garage, if we can't own the garage and, therefore, promise him parking he is walking away.

Alderman DeVries stated I at this point am comfortable with asking...I would like to make the motion before us and maybe staff will assist that we do find this property surplus. I think there are additional portions that you need to address within that. Do we have that motion prepared?

Alderman Gatsas stated Mr. Nardi you and I had a conversation the other day and I explained to you that my position had nothing to do with Tower Realty it was just about the process. You and I entered into a conversation that you have come to City staff and I am not going to say numerous times but a few times about long-term leases on garage spaces. My understanding is that those...your desire for those spaces were never made known to the full Board. Now if you have lost tenants in the past because of that it shocked me that you wouldn't come to us and say we are interested in long-term leases on those spaces because we have tenants. Now my understanding from what Mr. Donovan said is the tenant that you have now is interested in the space if long-term lease spaces were available. Now I guess the question would be why wouldn't we issue those spaces long-term?

Atty. Nardi responded a lease scenario is not conducive to a commitment of this magnitude to the downtown. In order for the tenant to feel secure with his commitment in bringing the millions of dollars to the table he wants to make sure that ownership of that facility has and owns the garage attached to it for which it was built to support that retail operation. Also with the lease situation leases terminate at some point in time and that does not make ownership or the retail user comfortable.

Alderman Gatsas stated I understand that part of your answer. Could you maybe address the first part? Have you gone to City staff other times about leasing spaces?

Atty. Nardi replied we have met with them on a couple of occasions concerning other retail users that we had looking at the space. I believe for one user there was just not enough parking available to accommodate them and then the second scenario we could not give them a commitment and a guarantee that they would have parking long-term that they would feel comfortable in making their dollar commitment to that retail space. That is the Catch-22 that we have been going through and now we have another one here today who intends to spend in excess of \$5 million to bring that retail space back out of the blight and dark that it is in and without that garage and ownership of that garage they are prepared to leave downtown Manchester and go outside of Manchester.

Alderman Gatsas asked so when you went to City staff other times for leased spaces they said no to you.

Atty. Nardi answered they said that due to certain circumstances that were ongoing with the garage they could not accommodate our needs.

Alderman Gatsas asked so their answer to you was they were not interested in negotiating long-term leases.

Atty. Nardi answered that is not what I said.

Alderman Gatsas stated well maybe you could give it to me clearer.

Atty. Nardi stated because of circumstances ongoing with the status of the garage they could not accommodate the needs of retail units long-term.

Chairman Thibault asked could we get a motion.

Alderman DeVries stated I had a motion on the table and I think before we ask for a second I should ask staff to read that.

Deputy Clerk Johnson stated it is my understanding that the motion desired is to find that the Canal Street garage property is surplus to City needs and the direct sale to Hampshire Plaza LLC is recommended. As the garage was built as part of the Hampshire Plaza redevelopment ownership of the parking garage is critical to the Hampshire Plaza's leasing of the retail space and it is important to the Hampshire Plaza's leasing of office space as well. Such property being fully leased will increase the value of Hampshire Plaza and would thereby increase the assessed value and there would be tax benefits for the City as well.

Alderman Pinard duly seconded the motion. Chairman Thibault called for a vote. The motion carried with Aldermen Gatsas and Garrity duly recorded in opposition.

Deputy Clerk Johnson stated we would also note that the purchase and sales agreement that has been submitted by staff would be submitted as part of the recommendation with the committee report to the Board.

Alderman Gatsas requested to file a minority report.

Chairman Thibault addressed Item 4 of the agenda:

Old Wellington Road

Discussion of surplus determination.

Deputy Clerk Johnson stated the property on Old Wellington Road, which the Board has taken action on in the past the Committee needs to recommend the surplus determination.

Chairman Thibault stated I would just like to caution the Committee that this had already gone to the Board. What we are doing here tonight as a Committee is strictly declaring this land surplus. That is all we are doing here in Committee and this has to go to the Board tonight and if, in fact, the Board wants to vote on it one way or the other that will be their prerogative.

Deputy Clerk Johnson stated the recommendation from the Planning Department indicates that the property could be found surplus to City needs. At the last meeting of the Board, the Board also asked staff to negotiate and come back to this Committee with a purchase and sales agreement, which the staff has done. Our recommendation at this point if you desire to proceed with disposition would be to recommend the surplus determination to the Board and to refer the purchase and sales agreement directly to the Board to be taken up with the last item of business this evening, which is also another item related to this. It should be taken together.

Alderman DeVries asked so if there is going to be complete and further discussion on this it will be taken up at the full Board later. This motion to find it surplus will not limit that discussion in any way, shape or form?

Deputy Clerk Johnson answered that is right. What you are doing is referring the balance of it to the Board for further discussion.

On motion of Alderman DeVries, duly seconded by Alderman Pinard, it was voted to find the property on Old Wellington Road known as Tax Map 645 Lot 10 be found surplus to City needs and that the purchase and sales agreement be referred to the full Board for consideration without recommendation by the Committee with the intention of discussion of this item at the full Board level.

There being no further business, on motion of Alderman Pinard, duly seconded by Alderman DeVries it was voted to adjourn.

A True Record. Attest.

Clerk of Committee